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Dear Members of Council,

As you are preparing to consider Bill 180649 for a first vote this week, I wanted to take a moment to address some of your questions surrounding the language about collective bargaining agreements.

Section § 9. 4610 of bill 180649 addresses employers and employees who have signed collective bargaining agreements. It reads:

> *All of the provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unmistakable terms and only so long as the agreement is in effect contractually. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter.*

In plain English this means that the Fair Workweek ordinance will apply to all covered employees, regardless of whether they are represented by a union, but in such cases where there is a collective bargaining agreement, the employer and the union may agree to waive all or some of the provisions of the law if both parties find it mutually beneficial. This both legally sound and strong public policy.

Workers represented by a union are just as deserving of fair workweek protections as non-union workers. The bill's provision on collective bargaining recognizes that when an employer and a union agree to an arrangement which improves on the standards set out in the law, it is in each of their interests to allow them to do so through the waiver process. If both parties don't agree to the waiver, the ordinance shall apply.

This collective bargaining provision does not create any legal uncertainties. The law is not affected by the collective bargaining agreement unless both parties agree to a waiver. In fact, any kind of automatic carve out of all employees represented by a union would jeopardize the bill insofar as the Supreme Court has found similar carve outs to be illegal. In *Livadas v. Bradshaw*, 512 U.S. 107 (1994), the Supreme Court ruled that (1) state and local labor standards laws must be applied equally to employees engaged in collective bargaining and those who are not, unless (2) these laws have explicit allowances for an employer and employees to come to a different deal through collective bargaining. *Id.* at 131-132.

For these reasons it is essential that the section of the bill covering collective bargaining be maintained without any amendments.

Yours,

Pat Eiding
President